was driving it along a major road by giving way to him. If he did not have a clear view of Mountbatten Road in both directions, he should have shown reasonable consideration for traffic in Mountbatten Road by stopping before entering Mountbatten Road.

For the above reasons I held that there was, in my judgment, sufficient evidence for the Magistrate to call upon the accused to enter upon his defence. I accordingly set aside the order of acquittal and remitted the case to the Magistrate's Court with a direction that the Magistrate call upon the accused to enter upon his defence. I must add that a charge under section 25(1) of the Road Traffic Ordinance should follow the wording of the section closely and should contain the words "without reasonable consideration for other persons using the road".

Appeal allowed. Order of acquittal set aside.

Solicitors: *Allen & Gledhill.*

MUNUSAMY v. THE PUBLIC SERVICES COMMISSION

[O. C. J. (Ong J.) May 3, 1960]

[K. L. — Originating Motions Nos. 2 and 3 of 1959]

Constitutional Law — Public services — Restriction on dismissal and reduction in rank — Reversion not amounting to reduction in rank — Constitution of the Federation of Malaya, Art. 135 — Certiorari.

Specific Relief — Mandamus — Specific Relief (Malay States) Ordinance, 1950, s.44.

Reversion from a probationary appointment to a formerly held substantive post does not amount to reduction in rank within the meaning of Article 135 of the Federation of Malaya Constitution.

Semble: *Certiorari* will lie to quash an order infringing Article 135(2).

Cases referred to:—

(1) *High Commissioner for India* v. *I. M. Lall* A.I.R. 1948 P.C. 121, 124-7.
(2) *Shyamlal* v. *State of Uttar Pradesh & Anor.* A.I.R. 1954 S.C. 369, 374; [1955] 1 S.C.R. 26; [1954] S.C.J. 493.
(3) *Satish Chandra Anand* v. *Union of India* A.I.R. 1953 S.C. 250; [1953] S.C.R. 655.
(4) *Gopi Kishore Prasad* v. *State of Bihar* A.I.R. 1955 Patna 372.
(5) *M. V. Vichoray* v. *State of Madhya Pradesh* A.I.R. 1952 Nag. 288.
(6) *Rabindra Nath Das* v. *General Manager, Eastern Railway & Ors.* (1955) 59 C.W.N. 859.
(7) *Kader Nath Agarwal* v. *State of Ajmeer* A.I.R. 1954 Ajm. 22.
(8) *Laxminarayan Chironjilal Bhargava* v. *Union of India* A.I.R. 1956 Nag. 113.

MOTIONS.

C. C. Rasa Ratnam for the applicant.

I. Talog Davies (Senior Federal Counsel) for the respondents.

Cur. Adv. Vult.

The facts and arguments appear sufficiently from the judgment below.

Ong J.: In these two motions the applicant moves the Court, first, for an order of *certiorari* to quash a decision of the respondents, the Public Services Commission, terminating with effect from May 23, 1958, the appointment of the applicant as a Probationary Assistant Passport Officer in the External Affairs Service of the Government of the Federation of Malaya and reverting him to his previous post of Immigration Officer; secondly, for an order in the nature of a *mandamus*, under section 44 of the Specific Relief (Malay States) Ordinance, 1950, requiring the respondents to re-instate the applicant as an Assistant Passport Officer in the said External Affairs Service on probation.

At the commencement of the hearing I made an order, with the agreement of counsel, for consolidation of the two motions. I referred Federal Counsel also to the affidavit of the Secretary to the Public Services Commission, filed only in Originating Motion No. 2 of 1959, which confined itself to submissions of law under the Specific Relief Ordinance, but disputed no allegation of fact in the applicant's statement and affidavit. Federal Counsel stated that the averments of fact by the applicant are not challenged, but only the conclusions to be drawn therefrom.

The facts of this case may now be set out. On February 19, 1957, an advertisement in the *Malay Mail* newspaper invited applications for posts of Assistant Passport Officer for service in Federation of Malaya Government Oversea Missions. The relevant portion reads:

"Applicants will be selected according to the following order of preference: (1) Serving Assistant Passport Officers and Junior Assistant Passport Officers in the Immigration Department who have had not less than 5 years' service and possess School Certificate. (ii) All serving Government Officers who have had 5 years' service and who possess School Certificate."

At that date the applicant was a serving Government Officer who had had more than 5 years' service as an Immigration Officer, and, as such, subject to requisite qualifications, his application had to be dealt with under the second category. As regards his educational qualifications he held a "Leaving Certificate" from his school, the Methodist Boys' School, Kuala Lumpur, which states, *inter alia*:

"Standard at time of leaving: School Certificate Class (Camb.)

Reason for leaving: Graduated.

Remarks: He represented the School in football (4 years), cricket (4 years), and Hockey. Captain of School Cricket Team and Combined Schools Team. Has represented State in Cricket. Very good sportsman and athlete. A good leader".

It is not in dispute that other advertisements appearing from time to time, inviting applications for Federal Government vacancies or study leave scholarships were couched in more precise terms as to the type of School Certificate required to qualify.

In his letter of application dated February 21, 1957, the applicant wrote:

"I am a local born Indian aged twenty-eight and am a Federal Citizen. I have passed my School Certificate and have been in Government service for the past seven years. I can speak Malayalam, Malay and can read and write Tamil. I am single."

He then proceeded to describe his past experience as Immigration Officer in the Passport Section.

In May 1957 he was interviewed by an Interview Board of the Public Services Commission and, from the evidence given in the Sessions Court by a member of that Board, there can be no doubt that the Leaving Certificate was produced (together with applicant's Birth Certificate) for inspection by the Board, and that this particular member made his notes therefrom. Here, I would observe that, whatever might have been the impression conveyed to any one reading the letter from the applicant, there was no question of any wilful misrepresentation taking place before the Interview Board which could possibly have left any misconception in the mind of any of its members as to the applicant's true educational qualification, unless they completely misunderstood the purport of the certificate. It is, however, true to say that the word "graduated" in the Leaving Certificate, appearing in juxtaposition with "School Certificate Class (Camb.)" may well have left an impression that he had passed the School Certificate examination and was eligible for appointment.

Following the interview the applicant was informed by a letter from the Chief Secretary's office, dated August 21, 1957, that he had been selected for appointment as Assistant Passport Officer, such appointment to be for 3 years in the first instance, with effect from the date of embarkation for his overseas post. It gave details of salary and allowances, and, as to the appointment, informed the applicant in paragraph 4 as follows:

"You will be required to serve a probationary period of one year from the date of your appointment and subject to your work and conduct being satisfactory you will be eligible for confirmation in your appointment at the end of this period."

The letter concluded by asking if the applicant accepted appointment on the terms and conditions stated.

The offer was accepted, and on August 25, 1957, the applicant duly left for Karachi, where he assumed duty as Assistant Passport Officer in the Office of the High Commissioner for the Federation of Malaya in Pakistan. In October 1957 certain investigations were made by the police, which resulted in a letter being sent to the applicant by the Permanent Secretary to the Ministry of External Affairs on November 30, 1957 recalling him for reposting.

Shortly after his return, the applicant was charged in the Sessions Court, Kuala Lumpur, with an offence under section 182 of the Penal Code. The charge was:

"That you on or about the 16th May, 1957 at Kuala Lumpur, in the State of Selangor, gave to a public servant, namely, Mr. Singaram, a permanent member of the Public Services Commission, an information namely, that you have passed the School Certificate examination in 1949, which information you knew to be false, intending thereby to cause the said public servant to do a thing which such public servant ought not to have done if the true state of facts respecting such information was known to him, to wit, to recommend you for the appointment of Assistant Passport Officer in the Government Overseas Missions, and you did thereby commit an offence punishable under section 182 of the Penal Code."

He was acquitted on January 27, 1958, and an appeal to the High Court against such order of acquittal was dismissed on May 5, 1958. Meanwhile, on February 10, 1958 he was interdicted from duty, on half-monthly emoluments, by the Controller of Immigration, with effect from January 25, 1958, by reason of the criminal proceedings then pending in the appeal.

On May 23, 1958, the Secretary to the Public Services Commission sent to the applicant the letter which led to these proceedings. It is as follows:

"2. I am to say that it has come to the knowledge of this Commission that you have not passed the School Certificate required as claimed by you and that you are therefore under-qualified for the appointment. After due consideration of the circumstances and of the necessity to maintain the standards of the External Affairs Service and in fairness to other properly qualified candidates and appointees, it has been decided to terminate your appointment as Assistant Passport Officer, External Affairs Service on probation, with effect from the date of this letter.

3. You will revert to your former post in the Immigration Department on the terms and conditions under which you were serving before appointment to the External Affairs Service."

During the following months there was considerable correspondence between the Public Services Commission and the applicant's solicitor, in course of which the applicant was pressing continuously for reinstatement.

On November 13, 1958 the Secretary to the Public Services Commission sent the following letter:

"I am directed to refer to your letter RPSR/GDS/58/1 dated the 18th September.

2. I am to recapitulate the position for your benefit:

(1) Mr. Munusamy does not possess the "School Certificate" as required by Government and of which the meaning is well known to all in Malaya. In fact he failed the Cambridge Overseas School Certificate Examination in December 1949 in all the nine subjects for which he sat.

(2) Mr. Munusamy has in three applications for other posts claimed to have passed the "School Certificate" (the capital letters, his, are to be noted).

(3) Mr. Munusamy on 12th January, 1958 signed a departmental document recording particulars for his record of service which states that he had "Passed School Certificate (Senior Cambridge)".

(4) Government has the contractual right of any employer to terminate services at any time in accordance with the normal conditions of service applicable to the appointment.

(5) A serving Government Officer is subject to General Orders, one of which, General Order A. 25(d), gives expression to Government's right to terminate probation, if necessary, without reason assigned.

(6) Mr. Munusamy was appointed an Assistant Passport Officer on probation. He was subject to the overriding provisions of General Orders and Government's right as an employer.

(7) It is the practice where a probationary officer's qualification have later been found not to be such as are required and as he has claimed. that the officer's appointment has been terminated. This is not only reasonable but Government's duty in the interests of the taxpayer and the public, to maintain the public service at a proper standard, and in the interests of other serving officers who are properly qualified, and in fairness to other candidates not considered for selection because they were underqualified.

(8) Common Regulation 13 states a right reserved at the time to Government. This right was not exercised in the competition at which Mr. Munusamy was interviewed.

(9) Admission to a Scheme of Service on probation does not entitle that officer to retention in that scheme for obvious reasons. Otherwise probation would have no meaning.

(10) The case of Mr. Yap Foo Seng is not parallel to your client's for the reason given to you, that he was appointed a Junior Assistant Passport Officer under a Scheme of Service for Junior Assistant Passport Officers and Assistant Passport Officers at a time when a Standard VIII qualification only was required. It is a service principle that once an officer is confirmed in a scheme he is entitled to be considered for promotion within that scheme in competition with other officers of the same standing serving under the same scheme. Mr. Munusamy was not admitted to the scheme of Assistant Passport Officer until he was appointed an Assistant Passport Officer on probation and not eligible for the principle until confirmed.

(11) Mr. Munusamy was not "dismissed" or "reduced in rank", both of which are disciplinary punishments. Article 135(2) of the Constitution does not therefore apply to this case.

3. I am to inform you that General Orders to which Government Officers are subject provide that Officers, while being at liberty to seek the advice of their staff associations or some other party in regard to any matter must sign and submit their own representations through their Head of Department.

4. Mr. Munusamy has elected to make his representations through yourself. The decision that he should revert to his former post was made by the Public Services Commission which is the final arbiter in service matters. His representations have been considered by the Commission and no grounds are seen to vary that decision. I am therefore to inform you that the matter is now regarded as closed.

5. A copy of this letter is being despatched under separate cover to Mr. Munusamy through his Head of Department and also to the Permanent Secretary to the Prime Minister's Department, for the information of the Hon. the Prime Minister whom you have addressed in the matter."

On December 12, 1958, the Public Services Commission said their final word on the matter when the applicant's solicitor was informed that the Commission had nothing to add to their letter of November 13. That concludes a summary of the facts and the reason for the Commission's decision to revert him to his former substantive post.

I would here observe that the Public Services Commission in their letter of August 6, stated unreservedly that the quality of the applicant's work or his conduct subsequent to appointment never came in question, and Federal Counsel conceded that in Karachi the applicant gave complete satisfaction. The reason for the step taken against him was that set out in the letter of May 23, 1958 and in paragraph (7) of the letter of November 13, 1958.

I shall proceed first to deal with the question of *certiorari*. Counsel for applicant argued that *certiorari* should go against the respondents on the ground that Article 135(2) of the Constitution had not been complied with when they terminated the applicant's appointment as probationer Assistant Passport Officer and reverted him to his former post in the Immigration Department. Article 135 reads as follows:

"Restriction on dismissal and reduction in rank.

135(1). No member of any of the services mentioned in paragraphs (b) to (g) of clause (1) of Article 132 shall be dismissed or reduced in rank by an authority subordinate to that which, at the time of the dismissal or reduction, has power to appoint a member of that service of equal rank.

(2) No member of such a service as aforesaid shall be dismissed or reduced in rank without a reasonable opportunity of being heard."

The third clause is not relevant to these proceedings.

The contention of the applicant's Counsel is that by reason of non-compliance with Article 135(2), the decision of the respondents was void on three grounds: that they had acted without jurisdiction, that there was error of law on the face of the record, and that their decision was taken contrary to the principles of natural justice. The non-compliance alleged is that the applicant was never given a reasonable, or any, opportunity of being heard before action taken by the respondents in the manner set out in their letter of May 23, 1958. The exercise of the respondents' powers, it was argued, is subject to the mandatory restrictions imposed by Article 135(2) which are in the nature of a condition precedent, and a breach thereof renders the decision made by them liable to be quashed on *certiorari* for want of jurisdiction and error of law. Furthermore, the requirement that the applicant should have a reasonable opportunity of being heard clothes the respondents with the characteristics of a quasi-judicial body, and gives statutory recognition to the requirement that respondents must, before making their decision, observe the principles of natural justice.

The respondents' reply to these submissions, briefly, is that the respondents are not amenable to *certiorari*, and, alternatively, if they are, this is not the proper case for such an order. Federal Counsel's argument is that the word "eligible" in the context of the respondents' letter of August 21, 1957, offering the appointment to the applicant, gave him no vested right to the appointment until confirmation; that termination of the applicant's appointment on probation was clearly not a dismissal because he still remains in Government service; that a person while on probation holds no rank, so that in fact the applicant never had been even reduced in rank, much less dismissed. Finally, Federal Counsel submitted that "law" in Article 144(1) of the Constitution includes the Common law, convention and usage, as well as written law governing the status of public servants, wherefore. different considerations apply to Government or public servants, as distinct from those applying to

private employees; that the respondents' decision was made in the interests of public policy and good government, and that in so doing the respondents were performing an administrative act within their discretion, and were in no way acting in any quasi-judicial capacity.

Counsel for the applicant has referred in his argument to a large number of authorities.

After having gone through these authorities, involving no little time and labour, I trust I shall not be considered discourteous to counsel, or unappreciative of the intense industry he has shown in his researches, if I omit references to them, because any discussion of such authorities, on the facts of this case, would be only academic. There is no need to discuss whether, under Article 135(2) of the Constitution, the Public Services Commission must act as a judicial or quasi-judicial tribunal, since, under that Article, the Commission must hear the public officer it is intended to dismiss or reduce in rank. Any action by the Commission in contravention of the Article must be constitutionally invalid, for the Constitution is the supreme law of the land. In such cases, *certiorari*, can and must issue to quash the order, because it is the right and the duty of the Court to maintain the rule of law and declare invalid any transgression of the limits of the Constitution. Nor is it necessary to invoke the principle of *audi alteram partem*, because it is part of the Article itself. I need refer only to *High Commissioner for India* v. *I. M. Lall.* [1]

Corresponding to Article 135(1) and (2) of our Constitution is Article 311 of the Indian Constitution, clauses (1) and (2) of which are derived from subsections (2) and (3) of section 240 of the Government of India Act, 1935. In *Lall's case* the Privy Council held that, because the purported removal of the respondent had not conformed to the mandatory requirements of subsection 240, it was void and inoperative.

The essential point for consideration, therefore, is whether, in effect, the decision of the respondents, terminating the applicants' appointment as Assistant Passport Officer on probation and reverting him to his former post in the Immigrttion Department, involved his dismissal from the probationary post, or a reduction in his rank.

Counsel for the applicant refers to the functions of the Public Services Commission, as set out in Article 144(1), which provides:

> "Subject to the provisions of any existing law and to the provisions of this Constitution, it shall be the duty of a Commission to which this Part applies to appoint, confirm, emplace on the permanent or pensionable establishment, promote, transfer and exercise disciplinary control over members of the service or services to which its jurisdiction extends."

He points out that, under the Eleventh Schedule to the Constitution (being Provisions of the Interpretation and General Clauses Ordinance, 1948 applied for Interpretation of the Constitution) "power to appoint includes power to dismiss," and he contends that the decision to terminate the applicant's appointment and revert him to his former post, was, in truth, a decision effecting the applicant's dismissal from the post of Assistant Passport Officer on probation and a reduction from that rank, regardless of the terminology used to disguise that fact.

I shall now deal first with the question of dismissal. With all respect to Counsel, I regret that I am unable to accept his contention that I must hold the termination of a probationary appointment as tantamount to dismissal. In *Shyamlal* v. *State of Uttar Pradesh & Anor.*, [2] Das J., in the course of his judgment, said:

> "Removal, like dismissal, no doubt brings about a termination of service, but every termination of service does not amount to dismissal or removal. . . . . Our recent decision in *Satis Chandra Anand* v. *The Union of India* [3] fully supports the conclusion that Article 311 does not apply to all cases of termination of service."

In *Shyamlal's case* the question was whether a termination of service brought about by compulsory retirement amounted to dismissal or removal from service, so as to attract the provisions of Article 311. The Court were of opinion that the answer depended on whether the nature and incidents of the action resulting in dismissal or removal were to be found in the action of compulsory retirement. In their view, removal or dismissal involved "the levelling of some imputation or charge against the officer which may conceivably be controverted or explained by the officer"; another distinguishing characteristic of dismissal or removal is that it is a punishment, imposed on an officer as a penalty, involving loss of benefit already earned; and, as both these elements were absent in the action taken by way of compulsory retirement, the Court held that compulsory retirement, as termination of service, did not amount to dismissal or removal, and consequently Article 311 had no application.

Although Indian authorities have no binding force, they are entitled to great weight, and I would, with respect, adopt the test applied by Das J., with whose judgment Mukherjea, Bhagwati, Jagannadhadas and Venkatrama Ayyar JJ. agreed. In the present case no imputations of any sort whatsoever were made against the applicant, and the termination of his probationary appointment was professedly an administrative measure dictated by public interest, and not ordered as a penalty or disciplinary action. The applicant's Counsel raised no argument on this point, and, although it was submitted that the respondents had terminated the applicant's appointment "without cause or justification in law", there was never any suggestion that the respondents did not come to their decision in good faith, or that the reasons which they gave inadequate. The indisputable fact is that he never possessed the School Certificate, and was therefore under-qualified for the appointment, and the respondents, having discovered their error, albeit a little late, took necessary action to rectify the matter. I am accordingly of opinion that the termination of the applicant's appointment in those circumstances does not

amount to a dismissal to which the provisions of Article 135(2) would apply.

Apart from the question of law, it is impossible to overlook the fact that the applicant remains today in the continued service of the Government. Counsel for the applicant has not pointed out to me, nor have I been able to discover, any hiatus between the termination of the applicant's appointment in Karachi and his reversion to his post in Kuala Lumpur. He cannot be still in the Government service, if he was dismissed, unless he has been re-employed after his dismissal, and of that there is no iota of evidence. No question of his dismissal can therefore arise.

A more difficult question is whether the reversion of the applicant from the probationary appointment to his former substantive post amounts to reduction in rank. In my view "reduced in rank" means reduced in substantive rank, and not the reversion of an officer holding a post merely on probation to his original substantive rank. In *Gopi Kishore Prasad* v. *State of Bihar* [4] it was held that Article 311(2) of the Indian Constitution applied to probationers, and that they were entitled to have an opportunity of showing cause against an order of discharge. That decision, however, establishes no principle, because it was based on Rules 49 and 55 of the Civil Services (Classification, Control and Appeal) Rules, as amended in 1947, and Explanation II to Rule 49 provided that —

"the discharge of a probationer for some specific fault or on account of his unsuitability for the service, amounts to removal or dismissal within the meaning of this Rule."

On the other hand, there are certain Indian decisions which I think are of the greatest assistance in determining the question arising in this case. In *M. V. Vichoray* v. *State of Madhya Pradesh* [5] the judgment contains this passage:

"The first question which arises for consideration is whether the reversion of a person officiating in a higher post held by him amounts to reduction in rank, within the meaning of the expression used in Article 311 Clause (2) of the Constitution. In our opinion, if a person officiating in a higher post is reverted to his original post in the normal course, and not by way of penalty, he cannot be said to be reduced in rank. On the other hand, we are equally clear that where reversion is ordered as a penalty, it amounts to reduction in rank because such reversion is apt to stand in the way of a Government servant in securing his promotion in the normal course."

See also *Rabindra Nath Das* v. *General Manager, Eastern Railway & Ors.*, [6] and *Kedar Nath Agarwal* v. *State of Ajmeer* [7].

In *Laxminaravan Chironjilal Bhargava* v. *Union of India* [8] the facts were as follows: the petitioner, since his employment, had been working continuously and still continued as a temporary civilian employee in the Defence Department. In 1947 he was duly promoted as permanent supervisor, Barrack Stores, Grade I. In 1949 he was promoted as officiating temporary Barrack Officer, and he continued to officiate in this post till February, 1952, when he was informed by the Departmental Promotion Committee that as it had found him unsuited for continued retention in the grade of Barrack Officer, he was being reverted to Supervisor, Barrack Stores, Grade I. The petitioner's complaint was that he was not given an opportunity of showing cause against his reversion, as provided by Article 311 of the Constitution. I quote from the judgment:

"A person cannot be deemed to be a member of a service unless he is permanently absorbed therein: nor, in our opinion, can he be deemed to be holder of such post unless he holds it permanently. For holding a post permanently the post itself must be permanent and the incumbent must be a permanent employee."

This is also the view of Nigam J.C. in *Kedar Nath Agarwal's case*, [7] where he said:

"I am of opinion that unless a person can affirmatively show that he has been appointed to a post substantively or has been confirmed in the appointment, the normal presumption would be that he had been appointed only in a temporary or officiating capacity."

Returning to *Laxminarayan's case* [8] the judgment went on to say:

"No doubt, the authorities have said that the petitioner had been negligent in the performance of his duties and that he has also disobeyed certain orders and instructions. But when they said so they did not propose to penalise him in any way for his actions. All that they thought it necessary to do, in view of the shortcomings of the petitioner, was not to confirm in the higher post. In our opinion this does not amount to inflicting penalty on a person for his shortcomings, in the strict sense of the word 'penalty'. Penalty, as we understand it, is necessarily by way of retribution or correction.

"When an act is not intended to be either by way of retribution or correction, it cannot be regarded as a penalty at all. If the Departmental Promotion Committee declined to approve of the petitioner's promotion because of some shortcomings which it found in his work and suggested his reversion to the substantive post, its action cannot be characterised either by way of retribution or correction."

The Court accordingly declined to assist the petitioner.

In interpreting what is "reduction in rank" under Article 135(2) of our Constitution, and in deciding whether the applicant's reversion to his original substantive post amounts to a reduction in rank, I would respectfully adopt the reasons given in the cases above referred to. The proper test to apply, when one has to find the dividing line between actions which do, and those which do not, come within the purview of Article 135(2), is whether such actions are penal in character or otherwise. In the instant case I am clearly of opinion that the applicant's reversion was merely the logical result of the respondent's holding that he was under-qualified for confirmation in the probationary appointment, and not action taken by way of penalising him. It therefore does not amount to "reduction in rank", and the provisions of Article 135(2) have no application.

The application for an order of *certiorari* is accordingly dismissed. Dismissal of the other motion follows, as a matter of course.

Coming to the question of costs, I must say that I feel considerable sympathy for the

applicant, who seems to have been the unfortunate victim of circumstances, although he was responsible, initially, for his own predicament. However, the respondents cannot, in all good conscience, disclaim all responsibility for a lapse on the part of their Interview Board. The sequel to all this has been lamentable. The applicant is back to where he was, and, in addition, he has had, for several months, the gravest personal anxiety any civil servant can ever have, of a serious criminal charge hanging over his head. He has been put to considerable expense to defend and clear himself. And, withal, the applicant's recall was not because he was found unfit for confirmation in the appointment, but rather that public interest requires it. In all the circumstances, therefore, I propose to exercise my discretion in the matter of costs, so that, instead of costs following the event, I make no order.

In fairness to the respondents, I wish to emphasise that, in making no order for costs in their favour, I attach no blame whatsoever to the respondents, or to their Interview Board, or to any member thereof for what is clearly an oversight, which may be attributed to heavy pressure of work.

In conclusion, I would express my sincere hope that the applicant's action in availing himself of the right to bring this matter for determination by the Court will not, in any way, prejudice his future career in the service of the Government. I must add that I am greatly indebted to both Mr. C. C. Rasa Ratnam, Counsel for the applicant, and to Mr. I. Talog Davies, Federal Counsel, for their most able arguments and lucid presentation of their case, which have been of the greatest assistance to me.

Application dismissed.

TENG KUM SENG v. PUBLIC PROSECUTOR

[A. Cr. J. (Thomson C.J.) May 6, 1960]

[K. L. — Selangor Criminal Appeal No. 5 of 1960]

Evidence — Evidence of system — Identity of voice on the telephone — Evidence of handwriting expert — Chinese characters.

Criminal Law and Procedure — Charge — Combination of one element of the completed offence of extortion under Penal Code s.384 with one of inchoate offence under s.385 — Test of sufficient certain notice.

In this case the appellant was convicted on three charges of putting persons in fear of injury in order to commit extortion contrary to section 385 of the Penal Code. In each case it was alleged that the appellant's method of operation had been to write a letter to his intended victim demanding the money and also make telephone calls referring to the letter. Each of the intended victims made a report to the police but it was only as a result of the report in the third case that the police, after having made arrangements at the telephone exchange, succeeded in arresting the appellant as he was leaving a public telephone call box after having been seen apparently speaking on the telephone and then putting down the receiver. As he was being removed to a police car he threw away a piece of paper which was recovered and on it was found written the telephone number of the complainant in the third case.

Beyond the evidence as to the circumstances in which he was arrested which was admissible in relation not only to the third charge but also as evidence of system relevant to the first and second charges, was the evidence that each of the three victims was given the opportunity of listening to a number of persons including the appellant, all strangers to them, speaking on the telephone and each of them identified the voice of the appellant as the voice which had spoken to him on the telephone. There was also the evidence of a handwriting expert who had compared the letters received by the three victims with specimens of the appellant's handwriting and formed the opinion that the three extortion letters were in the handwriting of the appellant.

Held: (1) what weight is to be attached to the evidence of the identity of voices, particularly in the case of Chinese voices, may be a matter of opinion: it was a matter on which the Magistrate was entitled to form his own opinion. As to its admissibility the Court has no reason to quarrel with it;

(2) evidence of handwriting expert is always of very questionable value, particularly in the case of Chinese characters.

Observations on carelessness in drawing charge.

Per Curiam: The real test in all these cases is whether the accused person gets sufficient certain notice of what is charged against him. In spite of the inartistic words (in the charge) it is quite clear both from the inclusion of the words "in order to the committing of extortion" and the reference to section 385 that what was alleged against him was not the consummated offence but the inchoate offence.

MAGISTRATE'S CRIMINAL APPEAL.

Edgar Joseph, Jr. for the appellant.

B. T. H. Lee (Deputy Public Prosecutor) for the respondent.

Cur. Adv. Vult.

Thomson C.J.: This appellant was convicted in the Magistrate's Court at Kuala Lumpur on three charges of putting persons in fear of injury in order to commit extortion in contravention of section 385 of the Penal Code. He was sentenced to six months' imprisonment on each charge, the sentences to run concurrently. Against these convictions he has now appealed.

The three alleged offences were committed on 3rd and 11th March, 1959, and on 6th May, 1959, against three persons named Wong, Kok and Wan, all residing or carrying on business in the centre of Kuala Lumpur.

In Wong's case the complainant received a telephone call from a Chinese whom he did not know stating that a letter had been left in his house. Shortly after he received another telephone call in which what appeared to be the same voice told him that the speaker was the leader of an extortion gang and demanded $2,000 from him. The speaker went on to ask about the letter which Wong had not yet seen and told him not to report the matter to the Police. If he did the lives of his family and himself would be in danger. Later his wife brought him an envelope which had been left at his house. This contained a bullet and a letter written on red paper and in Chinese characters demanding $2,000 and threatening that if the money was